IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2658 OF 2005

Vishwanath Bhaiya @ Mallaha & Ors. ... Petitioners

V/s.

Chandrakant Shankar Kalap & Ors. ... Respondents

Mr.S.S. Kulkarni for Petitioners
Mr.P.S. Dani for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 9, 2005**

P.C.:

. The Petitioner challenges the findings of the Appellate Court. The Appellate Court has allowed the appeal filed by the plaintiffs/respondents herein. The trial Court had dismissed the suit while holding that although it was a genuine requirement of the plaintiffs to acquire the suit premises, the hardship of the defendants i.e., the Petitioners herein, was greater. The appellate Court has considered the fact that the Petitioners were offered alternate premises for their sugarcane juice business. According to the Petitioners, these premises were smaller than their requirement and, therefore, they did not avail of these premises offered to them by the Municipal Council. The trial Court has found that the submission of the Petitioners was justified and hence, has decreed the suit. The Appellate Court has reversed the findings of the trial

Court.

2. Reliance is placed on the judgment of this Court in the case of *Nalin Narssi Vohra v/s. Gulabbai w/o. Amrutlal Murtha,* **1988 Mah. R.C.J 397** to submit that once the plaintiffs acquire alternate tenanted premises besides the suit premises the bonafide need no longer exists. The Appeal Court observed that the tenanted premises are needed for the business of Sanjay as well as Ravi who were carrying out repair work in the open space or on the road in front of the suit premises. The Appellate Court, therefore, found that Sanjay's need was greater. In my view, there is no need to interfere with these findings of the Appellate Court. Hence, Petition is dismissed.

3. The learned Advocate for the Petitioners prays for two years' time to vacate the suit premises. However, the Advocate for the Respondents opposes the request. In the interests of justice, the Petitioners are granted time upto 31.5.2006 to continue in the suit premises subject to furnishing undertaking in the usual terms within four weeks from today.

4. Petition is disposed off accordingly.